

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

TERRY L. GIBBS,)
vs.)
Plaintiff,)
vs.)
MICHAEL J. ASTRUE, Commissioner)
of the Social Security Administration,)
Defendant.)
Case No. CIV-05-1189-M

ORDER

On October 13, 2010, plaintiff filed a “Motion to Set Aside United States Magistrate Judge Order dated October 5th, 2010 Fed. R. Civ. P. Rule 59(e) [sic]” [docket no. 115]. By Order dated February 24, 2011, the Magistrate Judge liberally construed plaintiff’s motion, at least in part, as one seeking reconsideration of the Order on October 5, 2010. The Magistrate Judge overruled plaintiff’s motion to set aside the magistrate judge’s order, when viewed at least as a motion for reconsideration.

On October 27, 2010, plaintiff filed his “Motion for Judgment as a Matter of Law Federal Rule of Civil Procedure, Rule 50(a)(1)” [docket no. 117]. On February 24, 2011, United States Magistrate Judge Robert Bacharach issued a Report and Recommendation on the Plaintiff’s Motion for Judgment as a Matter of Law [docket no. 138], and on February 25, 2011, the Magistrate Judge issued an Amended Report and Recommendation on the Plaintiff’s Motion for Judgment as a Matter of Law [docket no. 139]. In the Amended Report and Recommendation, the Magistrate Judge recommends that plaintiff’s motion for judgment as a matter of law be denied. The parties were advised of their right to object to the Report and Recommendation by March 14, 2011. On March 4, 2011, plaintiff filed his objections to both the Magistrate Judge’s Order on October 5, 2010 and

the Report and Recommendation.

Furthermore, on February 28, 2011, plaintiff filed his “motion pursuant to title 28 U.S.C. § 636(c)(4) to vacate reference of this civil matter to United States Magistrate Judge Robert E. Bacharach and motion pursuant to Fed. R. Civ. P. Rule 59(e) to set aside order at Docket Text Document Number 134, 135, 136 and Decide all outstanding motions pending in this case submitted by the plaintiff” [docket no. 141].

In reference to plaintiff’s motion to set aside, plaintiff asserts that the Magistrate Judge erred in granting an extension of time and allowing supplementation of the record. Specifically, plaintiff argues that the Magistrate Judge lacked jurisdiction to issue the Order.¹ Notwithstanding the Order recently vacated by the Magistrate Judge, the Court finds that the Commissioner has set forth good cause for an extension of time and to supplement the record. Accordingly, the Court overrules plaintiff’s objection as related to the motion to set aside.

Next, plaintiff objects to the Report and Recommendation on the basis that the Magistrate Judge, in granting an extension of time and allowing supplementation of the record, “circumvents the authority of the district court judge being requested by motion and lessen[s] Plaintiff[’s] rights by distortion of relevant facts.” Because this Court (as set forth above) has independently reviewed plaintiff’s objections in his motion to set aside, the Court overrules plaintiff’s objection as related to the Magistrate Judge’s authority to review the matter.

Finally, plaintiff objects to the Magistrate Judge’s Orders in connection with supplementation of the record, the setting aside of the Magistrate Judge’s Order, and an overruled motion to strike defendant’s response brief. Plaintiff asserts that the Magistrate Judge improperly

¹The Court would note that, on March 15, 2011, the Magistrate Judge vacated his Order on plaintiff’s motion to set aside.

decided dispositive motions, improperly ruled on matters, and issued orders which operate to undermine the prosecution of this case. Notwithstanding the Order recently vacated by the Magistrate Judge, the Court finds that the Magistrate Judge has not decided any dispositive motions or improperly ruled on matters. Even assuming the Magistrate Judge issued orders which operate to undermine plaintiff's prosecution of this case, the Court finds this is insufficient basis to find such rulings are contrary to law. Furthermore, the Court declines plaintiff's invitation to "[d]ecide all outstanding matters pending in this case submitted by plaintiff" in the first instance, rather than first committing to the Magistrate Judge for his Report and Recommendation. Accordingly, the Court overrules plaintiff's objections to certain orders of the Magistrate Judge.

Upon de novo review, the Court:

- (1) OVERRULES the objections to the Magistrate Judge's Amended Report and Recommendation and Orders;
- (2) ADOPTS the well-reasoned and thorough Report and Recommendation issued by the Magistrate Judge on February 25, 2011, and
- (3) DENIES plaintiff's motion for judgment as a matter of law [docket no. 117], motion for Order [docket no. 141] and motion to set aside [docket no. 147].

IT IS SO ORDERED this 16th day of March, 2011.



VICKI MILES-LAGRANGE
CHIEF UNITED STATES DISTRICT JUDGE